

## TERMS AND CONDITIONS

**By shipping the goods or by acknowledging receipt of this purchase order or by performing the work described on this purchase order, you agree to the terms and conditions of this sale set forth on the face of the purchase order and set forth herein. The terms of this purchase order are the sole and exclusive terms on which the Buyer agrees to be bound and any additional terms in your acceptance of this offer are hereby objected to.**

**1. DEFINITIONS:** The words and phrases set off by quotation marks in this Section of the Purchase Order shall have the meanings therein indicated. Whenever such words or phrases are intended to have their defined meanings, the first letter of such word or the first letters of all substantive words in such phrase shall be capitalized.

- (a) "Buyer" means 360 YIELD CENTER, LLC, an Illinois limited liability company.
- (b) "Code" means the Illinois Uniform Commercial Code.
- (c) "Goods" means the items identified on the front of this Order, including all component parts thereof, if any.
- (d) "Order" or "Purchase Order" means the instrument of which this definition is a part, including the front and reverse sides hereof, and includes any attachments hereto.
- (e) "Seller" means the person or organization to whom this Order is directed, or the person or organization who, with or without Buyer's consent, accepts this Order or ships the Goods pursuant to this Order instead of the person or organization to whom it is directed.

Whenever a word or phrase which is used in this Purchase Order is defined or used in the Code, such word or phrase shall have the same meaning as defined or used in the Code except to the extent that the Code definition or use is inconsistent with the definitions herein or the context hereof.

**2.** Seller warrants that the materials supplied hereunder shall be of the highest grade and quality unless otherwise specified, shall conform to the specifications, drawings, samples or other description furnished or specified to or by Buyer; shall be fit and sufficient for the purpose intended; and shall be merchantable, of good material and workmanship, and free from defect. These warranties are in addition to all implied warranties and all of the buyer's remedies set forth in the Code or otherwise available at law to Buyer and shall exist notwithstanding the acceptance and/or inspection by Buyer of all or a part of the materials, with respect to which such warranties are applicable. NONE OF THE REMEDIES AVAILABLE TO BUYER HEREIN OR AT LAW FOR THE BREACH OF ANY OF THE FOREGOING WARRANTIES MAY BE LIMITED EXCEPT TO THE EXTENT AND IN THE MANNER AGREED UPON BY BUYER IN A SEPARATE AGREEMENT SPECIFICALLY DESIGNATING SUCH LIMITATION AND SIGNED BY AN AUTHORIZED REPRESENTATIVE OF BUYER.

**3. ACCEPTANCE:** Buyer's acceptance of the Goods ordered hereunder shall not relieve Seller of any obligations and warranties hereunder. Acceptance of the Goods shall occur after Buyer has a reasonable opportunity to inspect and test the Goods and signifies to Seller that the Goods are conforming or that it will take or retain them in spite of their nonconformity, with an allowance for deterioration and damage or deficiency on quality.

**4.** Seller warrants that material or work furnished hereunder complies with all laws, regulations, executive orders or ordinances of the United States or any state or governmental authority or agency, whether involving government contracts or not, including those issued pursuant to the Fair Labor Standards Act, the Occupational Safety and Health Act, the Consumer Product Safety Act, and/or State and/or Federal Civil Rights and Equal Employment Acts. Seller shall indemnify and hold harmless Buyer from any losses, costs, fines, expenses, claims, demands, and

actions whatsoever arising out of Seller's noncompliance with the foregoing laws and regulations.

**5.** Buyer reserves the right at any time to make changes in any one or more of the following:

- (a) specifications, drawings and data incorporated in this Purchase Order where the items to be furnished are to be specifically manufactured for Buyer; (b) methods of shipment or packing; (c) place of delivery; (d) time of delivery;
- (b) and (e) reduce, increase or cancel the quantities covered by this Order. If any such change causes an increase or decrease in the cost of or the time required for performance of this Purchase Order, an equitable adjustment shall be
- (c) made in the contract price or delivery schedule or both. Any claim by Seller for adjustment under this clause shall be deemed waived unless asserted in writing within ten (10) days from receipt by Seller of the change.

**6.** All foreign sourced manufacturing must be discussed with and approved by 360 Yield Center prior to proceeding. Once a purchase order is placed, any change of manufacturing location must also be discussed with and approved by 360 Yield Center. Failure to comply with either of the above two provisions, could cause immediate cancellation of purchase order with offending vendor liable for any loss incurred whether from missed shipments or additional costs to 360 Yield Center for need to purchase substitutes.

**7.** Time is of the essence in this Order, and if delivery of items or rendering of services is not completed by the time promised, Buyer reserves the right, without liability, in addition to its other rights and remedies, to cancel this Purchase Order by notice effective when received by Seller, as to stated items not yet shipped or services not yet rendered, and to purchase substitute items or services elsewhere and charge the Seller with any loss incurred. Any provisions herein for delivery of articles or the rendering of services by installments shall not be construed as making the obligations of Seller severable.

**8.** Invoices are not due and payable until the materials or equipment purchased hereunder are received and inspected by Buyer. All materials and equipment will be inspected by Buyer within a reasonable time after delivery to insure that the materials satisfy Buyer's Standards. Rejected materials and equipment may be, at Buyer's option, either (a) held at Seller's expense, (b) returned to Seller, at Seller's expense, for repair, replacement, or credit, at Buyer's option; (c) retained by Buyer with an equitable reduction in price; or (d) repaired by Buyer at Seller's expense. Payment for any material, equipment or services hereunder shall not be deemed an acceptance thereof.

**9.** Shipment of material shall be in strict accordance with such instructions as Buyer shall provide, and Buyer may, from time to time, defer shipment of any part or all of the materials. There shall be no charge for boxing, packaging or cartage unless authorized in writing by Buyer. Seller will promptly notify Buyer in writing in the event of any delay in deliveries as specified. Should Seller not meet the specified shipping dates, any excess transportation charges to reduce delay and delivery are deductible as are any transportation charges on partial shipments or back orders.

**10. OWNERSHIP OF INTELLECTUAL PROPERTY:** Seller agrees to grant and assign, and does hereby irrevocably grant and assign to Buyer and its successors and assigns all worldwide right, title, and interest in any and all inventions, discoveries, computer programs, software, data, technologies, designs, innovations and improvements, and related patents, copyrights, trademarks and other industrial and intellectual property rights and applications therefor made or conceived by Seller or its agents or employees in connection with the performance of this Order. Seller acknowledges and agrees that anything which is capable of copyright protection made, designed or developed pursuant to this Order shall be a "work made for hire" for Buyer. Seller agrees to: (a) provide all reasonable assistance to Buyer, at Buyer's expense and without additional consideration, to secure, perfect, register, apply and defend for Buyer's benefit all protectable intellectual property including patents, trademarks, trade secrets and copyrights; and (b) to disclose to Buyer any potentially protectable intellectual property that is made or conceived in connection with the performance of this Order. Seller warrants that all of its agents or employees have agreed to assign and have assigned their rights to Buyer for any potentially protectable intellectual property that is developed in connection with the performance of this Order.

**11. INFRINGEMENT AND INDEMNITY:** Seller, its successors, assigns or heirs and legal representative shall forever indemnify and save harmless Buyer, its subsidiaries, affiliated companies, successors, assigns, employees, agents, distributors, customers and users of the Goods purchased hereunder (collectively referred to as "Affiliates") of and from any claim, demand, cause of action, suit, judgment, loss, or attorneys fees incurred in the investigation, defense or settlement of any court or other proceeding or suit or any threatened court or other proceeding or suit for actual or alleged patent, trademark or copyright, infringement, domestic or foreign, or infringement or violation of any similar rights. If in the performance of this Order, Seller or his agents or employees enter Buyer's premises, Seller shall indemnify and hold harmless Buyer and its Affiliates from and against all claims, dues, demands, liabilities and expenses (including attorneys' fees) arising out of injury to or death of, any person or damage to property caused in whole or in part by the acts or omissions of Seller or his agents or employees. In addition, Seller shall indemnify and hold harmless Buyer and its Affiliates from and against all claims, dues, demands, liabilities and expenses (including attorneys' fees) arising out of injury to, or death of, any person or damage to property attributable to the use, application, manufacture, remanufacture, operation or disposal of the Goods and which is caused in whole or part by (1) any breach of warranty by Seller; (2) any negligent act or omission of Seller or any agent or employee of Seller regardless of whether or not it is caused in part by Buyer; (3) any design or other defect in the Goods; or (4) any environmental cleanup, removal or remediation of a substance or material included in the Goods and disposed of in accordance with applicable laws. Upon the request of Buyer, Seller shall, at its expense, defend all claims, proceedings or suits against Buyer or any Affiliate of Buyer in which any of the aforesaid claims are alleged. Buyer agrees to notify Seller promptly upon its receipt of notice of any claim.

**12. RISK OF LOSS:** Unless otherwise noted herein, the risk of loss shall not pass to Buyer until the Goods are accepted by Buyer in accordance with Paragraph 3 hereof.

**13. REMEDIES:** The rights and remedies of Buyer hereunder shall not be exclusive, but shall be cumulative and in addition to any other rights and remedies provided by any and all other clauses and paragraphs of this Purchase Order and to all other rights and remedies in law or equity including, but not limited to, the right of Buyer to set-off amounts payable to Seller hereunder against any amounts otherwise owed to Buyer by Seller.

**14. CONFIDENTIALLY:** Seller shall not without Buyer's written consent advertise or publish the fact that Seller has furnished or will furnish or sell the Goods or any other items to Buyer. Seller shall not disclose the

existence of or any particulars concerning this Order to any person except as may be required by law. All patterns, tools, dies, designs, know-how, specifications and other tangible and intangible property furnished by Buyer to Seller shall be and remain the property of Buyer and shall not be sold, assigned, shown or disclosed to any person except as may be required by law. All such property: (1) shall be plainly marked or otherwise adequately identified by Seller as the property of Buyer; (2) shall be used by Seller for the sole purpose of filling this Order and other orders of Buyer; (3) shall be held by Seller at Seller's risk; (4) shall be adequately insured by Seller, and (5) shall be delivered to Buyer upon request, in which event Seller shall deliver such property to Buyer in the same condition as when received by Seller, reasonable wear and tear excepted. All information or data disclosed or furnished to Buyer by Seller under this Order shall be deemed sold as part of the price hereof, nonproprietary and free of all restriction whatsoever.

**15. PRICES AND OTHER CHARGES:** Unless otherwise stated on this Order, all prices for the Goods shall be F.O.B. destination, and no additional charge may or shall be made by Seller for packaging, wrapping, packing, crating, drayage or any other expenses incurred by Seller. All federal, state and local sales, excise or similar taxes shall be borne by Seller, and Buyer shall, upon Seller's request, furnish any exemption certificate available to Buyer. Buyer reserves the right to discount invoice price because of late delivery dates which cause production interruptions. By acceptance of this Order, Seller represents that the prices charged for the Goods are the lowest prices charged by Seller to Buyers of a class similar to Buyer under quantity and delivery terms similar to those specified on the front of this Order.

**16. DELEGATION OF DUTIES AND ASSIGNMENT OF RIGHTS:** Without Buyer's prior written consent, Seller shall neither delegate in any manner to any other person the performance of any of Seller's obligations hereunder nor assign any amount which may be or which may become due hereunder.

**17. NON-WAIVER:** The failure of Buyer to insist on the performance of any of the terms, or to exercise any right or privilege, or its waiver of any breaches shall not thereafter waive any such terms, conditions, right or privileges that it might otherwise have hereunder.

**18. GOVERNING LAW:** All claims, disputes and other matters in question arising out of, or relating to, this Order and any contract arising out of this Order shall be governed and decided in accordance with the law of the State of Illinois. In the event of any dispute between the parties, such dispute will be settled exclusively in a court of law in Tazewell County, IL or the U.S. District Court for the Central District of Illinois in Peoria, IL.

**19. ENTIRE AGREEMENT:** The provisions contained herein, together with any attachments hereto initialed by the parties, shall constitute the entire agreement between the parties. All previous communications, representations, and agreements, either verbal or written, between the parties hereto with respect to the subject matter hereof are hereby superseded.